

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 18TH JULY 2007 / 27TH ASHADHA 1929

Bail Appl..No. 4333 of 2007()

CRIME NO. 225/07 OF MUKKON POLICE STATION, KOZHIKODE

PETITIONER/ACCUSED

MUSTHAFFA, S/O MOOSA,
THAVALAM HOUSE, POST KARASSERI,
MUKKON VIA, KOZHIKODE DIST.
POST VELLASSERI, KOZHIKODE TALUK.

BY ADV. SRI.R.SUDHISH
SMT.M.MANJU

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY THE
SUB INSPECTOR OF POLICE, MUKKOM POLICE STATION,
KOZHIKODE DISTRICT, REP. BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION
ON 18/07/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R. BASANT, J.

B.A.No. 4333 of 2007

Dated this the 18th day of July, 2007

ORDER

Application for anticipatory bail. The petitioner faces allegations, inter alia, under Section 332 I.P.C. That is the only non-bailable offence alleged. The crux of the allegation made by the defacto complainant, the Medical Officer of a Primary Health Centre, is that three persons - Junior Health Inspectors - deputed by him to inspect the hotel of the petitioner were assaulted and they were deterred from performing their official duty by the petitioner. The alleged incident took place at 3 p.m. on 7.6.2007. The victims allegedly passed on the information to the Medical Officer and the F.I.R. at the instance of the Medical Officer was registered at 6 p.m. Investigation is in progress. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the allegations are totally false. The incident did not take place in the manner alleged by the defacto complainant. As a matter of fact, three persons came to the hotel. They were not prepared to give the

price of the articles which they consumed. There was a quarrel. The petitioner had also lodged a complaint before the local police and a crime was registered. To save their skin the miscreants had prevailed upon the Medical Officer to lodge an unjustified complaint. In these circumstances to save the petitioner from the undeserved trauma of arrest and detention, appropriate directions may be issued under Section 438 Cr.P.C., submits the counsel.

3. The learned Prosecutor opposes the application. He submits that all indications collected so far convincingly point to the complicity of the petitioner. At any rate, there is absolutely no justification in the prayer to invoke the powers under Section 438 Cr.P.C. to arm the petitioner with an order of anticipatory bail at the present stage, he submits.

4. Having considered all the relevant inputs, I find merit in the opposition by the learned Prosecutor. I am satisfied that this is not a fit case where the extra ordinary equitable discretion under Section 438 Cr.P.C. can or deserves to be invoked in favour of the petitioner. This is an eminently fit case where the petitioner must appear before the Investigator or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

5. This application is hence dismissed. Needless to say, if the petitioner surrenders before the Investigating Officer or the learned Magistrate having jurisdiction and applies for regular bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously.

(R. BASANT)
Judge

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